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Competitive Issue

Overview

National pressures have caused both carriers and governments to seek smoking bans on international flights. Competitive concerns have driven these efforts toward either mandated or collectively arrived at solutions. To avoid the perception that these actions interfere with the free market, there has been an attempt to disguise the actions as being based on safety.

Premise

On longhaul international flights carriers who deny smokers the opportunity to smoke will loose market share to competing carriers who offer smoking accommodation. This is particularly true in those markets in which the culture is more tolerant of smokers. However, once "the playing field is leveled," i.e., smoking is banned on all competing flights, the relative advantage/disadvantage disappears. Thus while carriers have been generally unwilling to "go it alone," they have supported actions by national governments and international organizations to ban smoking on all flights.

Actions

Both Canada and the United States, countries with vocal anti-smoking groups, have banned smoking on domestic flights. Various interests in these countries have promoted efforts to extend these bans beyond their national boundaries.

Canada

The best case history is what happened in Canada.[1/] In December of 1989, the Canadian government issued regulations banning smoking on all scheduled Canadian commercial flights. The ban was to take effect on December 30, 1989.

Citing the significant competitive harm to Canadian carriers, the Ministry of Transport convinced Parliament repeatedly to postpone the deadline, first until June 30, 1990 and thereafter every year until June 30, 1994. Even then the Ministry of Transport sought to further extend the effective date of the ban, again citing its adverse effects on Canadian carriers, but pressure from other elements of the cabinet proved too great.

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1/ See attached Regulatory Chronology for more details.

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ICAO

In September of 1992, Canadian representatives to ICAO proposed a resolution at the ICAO Assembly urging a ban on smoking on all international flights by July 1, 1996. Although the resolution passed the assembly, the issue was referred to the Air Navigation Commission (ANC) for further study as to possible safety consequences. The Canadian resolution was supported by the United States, which saw this as an opportunity to solve the competitive disadvantages of unilateral action while at the same time "exporting" an anti-smoking culture.

Quadripartite Agreement

Late in 1992, the United States, Canada, Australia and New Zealand proposed a quadripartite agreement to ban smoking on all flights of the respective countries' carriers operating between those countries. Again, because of fears over competitive pressures this agreement was not adopted until October of 1994, and even then New Zealand opted out.

United States

Oberstar Bill (HR 4495)

During the summer of 1994, then House Aviation subcommittee chairman James Oberstar introduced legislation to ban smoking on all international flights beginning or ending in the United States. Despite substantial opposition within the committee, the bill passed the House. It was not taken up by the Senate, however, before Congress adjourned. The House report accompanying the bill made it clear that the proposed legislation would cover foreign carriers as well as U.S. carriers so as to protect U.S. carriers from the competitive consequences inherent in the earlier Canadian legislation. Because of the extraterritorial reach of this legislation (see separate discussion on political overreach), a number of foreign embassies voiced strong protests. The proposed legislation has now lapsed and it is uncertain whether it will be re-introduced.

DOT Antitrust Exemption

With the failure of the Oberstar bill to become law, several U.S. and foreign carriers have joined together to petition the U.S. Department of Transportation for an antitrust exemption to allow them to enter into discussions concerning smoking bans. Since this is a form of "service fixing," which deprives consumers of a service, the carriers were forced to admit that their actions would be anti-competitive and that they needed an exemption so as to avoid violating U.S. antitrust laws. The DOT granted the exemption, but in doing so it also recognized that the action would be anti-competitive. Nevertheless, it determined the exemption to be in the "public interest".

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Conclusion

The preceding discussion demonstrates two things. First, the Canadian and U.S. governments and the airlines have all recognized that unilateral bans on smoking will disadvantage the proponent. Their only solution is to "level the playing field" by applying the ban broadly or within a market area so as to eliminate any competitive edge a non-participant would have. Second, because the free market is compromised and the consumer thereby disadvantaged, a public policy reason must be found to justify this action. The reasons advanced are safety and health. The safety concerns, as demonstrated elsewhere, are totally without foundation; the health issue is basically an emotional one beyond the scope of this discussion.

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SMOKING RESTRICTIONS ON BOARD CANADIAN COMMERCIAL AIRCRAFT

REGULATORY CHRONOLOGY

1987-1989	Air Regulation 707, under authority of the Aeronautics Act, prohibitted smoking on board Canadian commercial aircraft on scheduled flights of two hours or less.
December 14, 1989	Non-Smokers' Health Regulations, under authority of the Non-Smokers' Health Act, superseded Air Regulation 707. The new regulations ban smoking on all Canadian commercial flights except charters. The ban was to take effect on December 30, 1989. The regulations were opposed by Air Canada, Canadian Airlines, and the Air Transportation Association of Canada.
December 28, 1989	Non-Smokers' Health Regulations were amended to authorize smoking on board long haul flights until June 30, 1990.
June 8, 1990	Non-Smokers' Health Regulations were amended, effective July 1, 1990, to provide for a phase-out of smoking over three years. Canadian carriers were required to reduce the total number of smoking seats annually by 25% with a total ban on smoking seats effective July 1, 1993.
January, 1991	Air Canada implemented a total smoking ban on all flights taking place on its own aircraft.
July, 1991	Cathay Pacific experimented with a ban on smoking on the Fukuoka-Hong Kong flights. This ban was later terminated.
1992	Canadian representatives to the ICAO General Assembly co-sponsored Resolution 829-15 which called on states to restrict smoking on all international passenger leading to a total ban effective July 1, 1996.
October, 8, 1992	ICAO General Assembly unanimously passed Resolution calling on states to restrict smoking on all international flights leading to a total ban effective July 1, 1996.
May 21, 1993	Canadian Airlines requested an exemption to the smoking ban be granted for six months, until December 31, 1993, in reference

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	to Canada-Japan flights only. Canadian Airlines feared financial losses due to the loss of smoking and accompanying non-smoking passengers.
Undated	Regulatory Impact Analysis Statement concerning the possible delay in implementing the regulatory ban stated that an option considered in keeping the July 1, 1993 ban effective date "was rejected because of the immediate and significant negative effect this would have on the ability of Canadian air carriers to compete in certain markets." Further, it stated that "[u]ntil such time as non-smoking marketing strategies are finalized and implemented, the only way for Canadian carriers to compete in markets, such as the Orient, is to authorize the limited designation of smoking sections on board aircraft."
1992	The U.S. proposed that Canada, Australia, and New Zealand join the U.S. in a four-way agreement to ban smoking on international flights between and amongst the four countries.
June 24, 1993	An amendment to the Non-Smokers' Health Regulations is issued, the effect of which is to delay the proposed ban on long-haul international flights until July 1, 1994. The regulation amendment appeared in the Canadian Gazette on July 14, 1993.
August 12, 1993	A letter from Air Canada to Jean Corbeil, Canadian Minister of Transport, expressed "deep disappointment at the way [the amendment to the Non-Smokers' Health Regulations] was handled."
April, 1994	The Air Transport Association of Canada, ATAC, which represents the airlines' corporate interests, asked the government to postpone the July 1, 1994 Non-Smokers' Health Regulations deadline. The ATAC claimed that the ban would cause the loss of approximately two-thirds of Air Canada's and Canadian Airlines passengers.
May 16, 1994	Air Canada began flights to South Korea and announced that it will remain a non-smoking airline. Air Canada only sold non-smoking seats on Air Canada flights taking place on other than its own aircraft (generally Korean Air Lines). The flights taking place on other than its own aircraft were nonetheless flights on which smoking was available.

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June 28, 1994	Newspaper reports indicated that the ATAC petition to postpone the July 1, 1994 Non-Smokers' Health Regulations deadline was denied.
June 30, 1994	The Ministry of Transport passed regulations which exempted until September 1, 1994 from the Smokers' Health Regulations total ban on smoking those flights taking place to and from Japan. No smoking was allowed on any other Canadian flight.
July 1, 1994	The total Cabinet overruled the Ministry of Transport and the exemption from the Smokers' Health Regulations for flights taking place to and from Japan did not take effect. No smoking is allowed on any Canadian flight.

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